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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,920	09/25/2003	Charles Dimitry Zayat		3870

39016 7590 02/26/2007  
MAURICE M. LYNCH  
429 CHURCH AVENUE  
WARWICK, RI 02885

EXAMINER

GATES, ERIC ANDREW

ART UNIT	PAPER NUMBER
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3722

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	02/26/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

## Office Action Summary

Application No.

10/671,920

Applicant(s)

ZAYAT ET AL.

Examiner

Eric A. Gates

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 10, 11 and 14 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10, 11, and 14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

1. This office action is in response to Applicant's amendment filed on 19 December 2006.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 10 is rejected under 35 U.S.C. 102(b) as being anticipated by Sarantitis (U.S. Patent Publication 2002/0115396 A1).
4. Regarding claim 10, Sarantitis discloses a rotary tool for resurfacing two surfaces simultaneously, said surfaces including a generally flat major surface 20 and an adjacent overlying minor surface 42 perpendicularly oriented (see column 4, lines 5-17) with respect to said major surface, said tool comprising: a motor driven shaft 37/15 (and portion above 37 in figure 6B that attaches 37 and 15 to the motor); a support plate 29 fixedly mounted to said tool having a first opening through which said shaft passes (as seen in figures 6 and 6B); a rotating blade holder 16 fixedly attached to said shaft 37/15, said holder 16 carrying blades 18 arranged to simultaneously engage said major and minor surfaces (see column 4, lines 11-15); a rigid guard housing 10/30 supported from said plate 29 (portion 30 is supported from plate 29 by screw 26) partially enclosing said

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holder, said housing having a second opening through which said shaft passes (as seen in figure 5), said housing having third (for vacuum conduit 12), fourth (on bottom of housing) and fifth (on front of housing) openings, said third opening adapted for coupling the interior of said housing to a source of vacuum, said fourth and fifth openings facing said major and minor surfaces respectively and through which said blades extend to engage said major and minor surfaces, said housing 10/30 located intermediate said plate 29 and holder 16 (at least a portion is intermediate plate 29 and holder 16); and means 26/38 for moving said housing with respect to said major and minor surfaces to thereby effect adjustment of the depth of cut of said tool relative to said surfaces (see column 4, line 51 to column 5, line 9), said means moving said housing with respect to said major surface comprising a first adjustment screw 26 that moves said housing toward and away from said support plate 29 (moves at least portion 30 of housing 10/30).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarantis in view of Erkritz (U.S. Patent 3,354,526).

7. Regarding claim 11, Sarantitis discloses the invention substantially as claimed, except Sarantitis does not distinctly disclose wherein said blades have a triangular shape and are mounted in said holder to have the tips of said triangle engage said major surface and the sides of the triangle engage said minor surface.

Erkfritz teaches the use of blades 30 that are triangular wherein the tips engage a major surface and the sides of the triangle engage a minor surface (see figure 1) for the purpose of engaging two adjacent edge surfaces simultaneously. Therefore it would have been obvious to one having ordinary skill in the art at the time the invention was made to have combined the tool of Sarantitis with the blades of Erkfritz in order to have blades with an alternative shape.

8. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Sarantitis in view of Zayat '957.

9. Regarding claim 14, Sarantitis discloses wherein said means for moving the housing with respect to said minor surface is a single second adjusting screw 38 operating to move one side of the housing toward and away from said minor surface (see column 5, lines 36-50), and said second adjusting screw 38 extends externally of said housing near an edge of the housing. Sarantitis does not disclose that the second adjusting screw rides on said minor surface during operation of the tool.

Zayat '957 teaches the use of an adjusting screw 78 that rides on the minor surface during operation of the tool for the purpose of providing a direct means for controlling the minor surface cut depth. Therefore it would have been obvious to one

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having ordinary skill in the art at the time the invention was made to have combined the tool of Sarantitis with the adjusting screw location of Erkfritz in order to an alternative, more easily adjustable means of controlling the minor surface cut depth.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 10, 11, and 14 have been considered but are moot in view of the new ground(s) of rejection.

11. Regarding applicant's argument that "Erkfritz is simply a disclosure of a triangular blade, but without the necessary teaching to make obvious its incorporation into a machine of the type provided in the claimed invention", the knowledge required to make obvious the incorporation of the triangular blade of Erkfritz into the tool of Sarantitis would have been well known at the time the invention was made, because both tools are used in the art of milling for the purpose of removing material from two adjacent surfaces simultaneously.

12. For the reasons as set forth above, the rejections are maintained.

### ***Conclusion***

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric A. Gates whose telephone number is 571-272-5498. The examiner can normally be reached on Monday-Thursday 7:45-6:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



EAG  
22 February 2007



MONICA CARTER  
SUPERVISORY PATENT EXAMINER